



Some Aspects of the Relations of the English Lower
Classes to the Criminal System, 1815-1830.

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The criminal law of England, before the reform period which began in 1822, was an accumulation of laws rather than a systematic code . Each law had been enacted to meet a specific situation. " They grew up from the offences which they afterward controlled, and their character and completion showed them to be the product of different periods*." Between 1660 and 1820 one hundred and eighty-seven capital offences were added to the laws, making in all over two hundred on the statute books involving death penalty. Sixty-three of these had been placed there in the reign of George III. alone. Criminal acts of all sorts were given the greatest penalty on the theory that extreme punishment would prevent crime, but in actual practice crime increased very rapidly during the first quarter of the nineteenth century. In 1805 four thousand six hundred and five were committed for trial in England and Wales and by 1818 one thousand three hundred and sixty-seven were brought into court. Three hundred and fifty in 1805 and one thousand two hundred and fifty-four in 1818 were sentenced to death, but only sixty-eight and ninety-seven respectively actually suffered that extreme

* Gifford's Life of Pitt. Vol. V. pp.157-8.

penalty. The remainder of the capitally convicted were transported for life. A small percentage of this criminal increase may have been due to the growth in population, which rose from about nine million in 1801 to eleven million nine hundred and seventy-eight thousand eight hundred and seventy-five in 1821. But the severity of the law contributed a large quota to this number, which will be shown later.

From 1810 to 1818 the number of capital convictions slightly decreased in proportion to the number committed for trial, and, while the actual number of executions increased slightly, yet the proportion of executions to the number capitally convicted lowered from one in five in 1805 to one in twelve in 1818^{*}. This would indicate that the practical application of the law was becoming, through this period, gradually less severe. However, the law was severe in two general senses. In the first place, it refused to establish a gradation of punishments in proportion to the enormity of the crime, but insisted, as it had always done, that the judges must have discretion; and therefore, in order to legalize this discretionary power, the law gave

* Committee on Criminal Laws. London, 1819. App. No. 1.

the severest penalty to a large number of crimes of wide ethical significance, in order to clear the country of objectionable characters, who trespassed upon the person and the property of their betters. At the time when each law was made to meet a definite circumstance,^{*} the laws were administered according to the letter of the law and the intention of the legislators;^{**} but at this time a distinction between the crimes against the person and the property crimes manifested itself. The former continued to be uniformly executed according to the letter of the law by all parties; even the lower classes believed in the justice of them.[#] Likewise all classes felt that the lack of classification of the people in the penal establishments was a useless severity, but what effected the middle and lower classes greatest was that the law bruised the feelings of both the prosecutors and the defenders, the former by its severe punishment, and the latter by its uncertain results and the lack of opportunity to defend the defendants.

* Gifford's Life of Pitt. Vol. V. pp. 157-8.

** Romilly, Parliamentary Debates. Vol. XXXIV.

Committee on Criminal Law. 1819. pp. 62.

Then the law was severe in particular cases in property crimes that burdened the conscience of the public, especially the most numerous prosecutors, the traders. The law did not conform to the wishes of the prosecuting public, but to those of the upper classes. They had nothing in common with the prosecutors or the defendant classes, therefore the burden rested with the prosecutor to use the legal process, or not, to protect himself and his property. These contradictory opinions about the law caused the feeling of severity that obtained among the prosecuted and the prosecuting classes, but the upper class used the same incidents and accidents to prove the leniency and justice of the law.* This inability to compromise developed the peculiar circumstances that may help to explain the causes of the increase in the criminal records and some relations of the lower classes to the penal law. To the upper classes the law was not severe; to the middle class it was severe, for it failed to prevent crime; and to the lower classes it encouraged crime then punished for it.

If the law had been rigidly enforced as the upper

* Parliamentary Debates. Vol. XIX. App.

classes intended, the criminal class would have been checked at least, but several mitigating circumstances softened the sharp edges of the law and encouraged rather than discouraged the commission of crime. Although it appeared severe enough on the statute books, yet in actual practice it was conditioned by the operation of the government and by the feeling of the people. In the first place prosecutors always considered the expense and the time involved before dragging a victim into court. In the small property crimes and petty larcenies these items often turned the scale in favor of the offender, who once more drew a prize in the criminal game. In London where these cases were more numerous the expense was reduced by the fact that the parties to the trial were in close proximity to the court,^{*} and the court sat early in the morning, or in the evening, so that the tradesmen could prosecute and still have the day largely for business.^{**} In the country the opposite condition obtained, for the parties had to be brought to the court from considerable distances at times and the prosecutor had to bear this expense,

* Committee on the Criminal Law. 1819. pp. 86.

** Wakefield's Facts on the Punishment of Death. pp. 71.

while the time spent and the inconvenience only increased the difficulty. The state attempted to remedy these difficulties by defraying the expenses in some cases, giving the magistrates the right to award costs against either party in a trial; but for some unaccountable reason the prosecutors hesitated to take advantage of such provisions of the law.* This burden, according to the testimony of experienced thieves, prevented the majority of robberies from being brought to the knowledge of a magistrate.** An association for prosecution of criminals in London broke up because the cost of prosecution was too great. An instance is recorded where a man stole two or three fowls. He was apprehended in the same locality, which involved ^{no} expense, but to prosecute him successfully an attorney was hired, which, together with minor expenses, brought the cost up to the large sum of thirty or forty pounds sterling.*** Since the burden of the costs was thrown upon the prosecutor he had little to gain and much to lose by such a proceeding. Therefore the individuals of the

* Wakefield's Facts on the Punishment of Death. pp. 72.

** Ibid.

*** Police of the Metropolis. 1812. pp. 240.

lower classes had this circumstance in their favor if the temptation to commit crime proved too strong to resist. It was an important cause of immunity from punishment and, as a result, of an increase in crime.* However, the cases that placed in danger the life of a person, or cruelly mistreated a person, were felt by all to deserve the punishment of death.

The humane feeling of the people was another influence on which practiced thieves and tempted persons calculated to prevent prosecution. It could not be counted on with certainty, for it varied with the social circumstances in which the prosecutor found himself at that time. Yet a witness before the committee on criminal laws, in 1819, testified that at the Old Bailey court a shorter calendar succeeded a session which had been attended with executions; and he felt that this was due to the outraged feelings of possible prosecutors.** The influences that moved people to hesitate about prosecution were as varied as the number of the people, but in general those cases involving unusual severity on the part of the state, or any other circumstance arous-

* Nightly Watch and Police of Metropolis. 1812. pp. 7.

** Committee on Criminal Law. 1819. pp. 122-3.

ing the feeling of the public, deterred the property owners from placing a man's life in jeopardy because of property. Humanitarian sentiment was a marked characteristic of this period, and it is not surprising that people who were so much concerned about the negro in the dependencies of the Empire should have hesitated to endanger the life of a white man for the sake of forty shillings, even though the cruel apprenticeship system was defended on the grounds that its abandonment would raise the price of cotton.

That humanitarian opposition to the death penalty was an effective influence in preventing prosecutions is evident from the fact that there was no hesitation to prosecute an offender when it could be done without incurring the death of the person.* Although the public knew very well that the prison system did not reform but rather educated the convicts in crime,*** the plaintiff did not want the taint of blood upon his conscience, and the uncertainty about the whole proceeding induced him to prosecute in the hope that

* Committee on the Criminal Law. 1819. passim.

*** Ibid. pp. 122.

the convict would be given the lighter sentence. The feeling of humanity undoubtedly grew with the eighteenth century and was very strong by the time of general reform about 1825. A large share of the failures to prosecute, recorded in the report of 1819, are attributed to this sentiment. But it would be wrong to conclude that this humanitarianism was the principal and final force working for an amelioration in the system. It was only one influence and was supplemented by the gradual increasing expense of prosecution and the fact that the laws did not protect property rights as they were expected to do.

The circumstances that tended to modify the severity of the statutory law during the trial of offenders depended upon the attitude of the parties composing the court and the nature of the crime. Most of the criminal cases were tried in the petty sessions and the quarter sessions. The judges who presided over these courts in the country were not men trained in the law but rather country gentlemen who got their position because of their social rank. They were assisted by professional lawyers as clerks. Their discretion gave them a wide range of possible attitudes towards the application of the law, but they loved the law not for its own sake

but rather because it was incumbent upon their rank to defend the established order of society, since the criminal code was formulated to meet the attacks made upon society by the lower orders.* It was a different feeling from that of the professional lawyer. However the Lord Chief Justice Eldon complained continually of the leniency of the judges.**

The men of the middle class usually composed both the grand jury and the petty jury, although nobility filled the box at times, so they possessed as a rule all the sentiments common to that class, which inclined them to mercy rather than severity in all applications of the law in property crimes when exaggerated circumstances were not present. As a rule, they did not want to serve on the jury, and often asked the sheriff to put them on the end of the jury list or leave them out altogether, for which service they paid the officer a bribe.***

But after the jury was made up and the trial was on,

* Wind ham Parliamentary Debates. Vol. XIX. App. XLII.

** Twiss' Life of Lord Chief Justice Eldon.

*** Committee on Criminal Law. 1819.

still the culprit had no reason to give up hope for the jury might do one of several extra legal things. In small property cases the jury resorted to all sorts of expedients to excuse the party from the capital charge and find him guilty of a minor count. They were under oath to observe the injunctions of the law and to do their duty, but the liberal construction they placed on the oath was exactly the thing that favored the defendant. It forced them into voting to hang a fellow being or becoming practically an accomplice in the crime by committing perjury which was an offence incurring capital punishment. But there is no evidence that the life of a jury-man was ever in danger from that score, but these pious perjuries were closely akin to the real crime for they were intentional and broke the law in spirit if not in the letter. Romilly called them a shameful trifling with oaths. In the crime of stealing forty shillings in a dwelling house the jury would reduce the amount stolen to thirty-nine shillings or lower, by finding the property worth less than the amount required by the law.* These particular cases were easily manipulated, for the value of money had changed between

* Committee on the Criminal Law. 1819. pp. 128-9.

the time of the formation of the law and the nineteenth century. This gave a leverage to the lower classes and encouraged a disregard of law that the juries were anxious to have observed by them. Old thieves shrewdly contrived to be tried on a capital offense for they hesitated to take human life, especially if the case depended upon circumstantial evidence, for in a majority of such cases the defendant was acquitted.** The jury sometimes returned a verdict of not guilty when the evidence was sufficient to warrant a verdict of guilty. No reason seems to be given for such action. It meant that they would break their oath before they would trample their conscience under foot. At other times they convicted, but recommended the convict to mercy. The whole situation grew out of this fact that money decreased in value, but the law remained the same; therefore, at this time, a person was tried for his life for stealing a smaller amount than would have convicted him when the law was framed.

The profession of crime was a sort of gamble, and the gamester usually repeated a process in which there

** Committee on Criminal Law. 1819. pp. 46.-.

were so many guarantees of a successful draw. They calculated that they could continue depredations on property and remain free from legal interference at least two years,** and this average may be doubled if the matter of commitments, acquittals, and convictions, for minor offenses, are left out of consideration. Evidently the tempted persons were justified in their opinion in disregarding the law. From 1808-1816 the number of people tried for stealing forty shillings in a dwelling house was one thousand and ninety-seven. Of this number two hundred and ninety-three were convicted capitally and none executed. In the year 1816 one out of forty-nine convictions was executed but it was a bad case.*** In other words the person was not convicted and executed for the crime of forty shillings but for exaggerated circumstances, over which a prosecutor had no control and knew nothing of.#

After conviction and sentence the last resort in the country sessions was the judge, and in the Metropolis the King in council. It seems that the judges of the inferior courts inflicted to the person the punishment he was to suffer

**Wakefield's Facts on the Punishment of Death. p. 76.

*** Romilly's Memoirs. Vol. I.

Twiss' Life of Eldon. Vol. II. 2. pp. 220-I.

county sessions, after pronouncing the legal sentences against the convicted persons, commuted the sentences of some to transportation, or to the hulks, or imprisonment in the county jail, and left the rest to suffer the punishments indicated in their sentences.* In London the judges sent up to the secretary of state for home affairs a list of the condemned before execution took place, giving the favorable circumstances of each prisoner. The council revised the list and recommended to the Crown those deserving of mercy. This last chance was the most uncertain of all the circumstances along the criminal path, for the defendant had no way of reaching the powers about the throne except by some influential friend, who often failed.** But by some mysterious process virtue entered into the powers above, and some few were chosen to suffer the extreme penalty, and the rest to be transported for life.*** No reason is given for this discrimination and no one could predict the result. The circuit judges sent in circuit letters through the council which were treated in the same mysterious manner. At the beginning of the reign of George III. the number of convicts executed outnumbered

* Committee on Criminal Law. 1819. p. 36.

** Corder's Life of Elizabeth Fry.

*** Wakefield's Facts on the Punishment of Death. pp. 188-9.

the pardons, but in this quarter of the century the commuted sentences had a large majority over the executed sentences.* The judges had a rule established by long practice in recommending convicts for royal clemency, for the choice seemed to depend upon the degree of injury which the crime inflicted on society.** At the same time young people were very seldom executed; mostly old, incorrigible, and professional thieves were supposed to be chosen.

Thus while the law was severe on the statute books, in actual practice the severity dwindled away to almost nothing because of the hesitancy of prosecutors, leniency of courts, and the commuting system of the judges and the central council. Many predetermined and social circumstances entered into every trial to establish justice and subdue severity. This difference between the law and the application of it encouraged the lower classes to commit crimes. The condition was enhanced by a vicious penal system which had no reforming or deterring influence upon the people.

* Romilly in Parliamentary Debates. Vol. 19. App. VI.

** Wakefield's Facts on the Punishment of Death. p. 152.

The police system of the nation was so defective that it increased the opportunity for crime, which resulted in an increase in the criminal class and in the number of crimes committed, while it helped to render harmless the threatening penal law. In the metropolis it is interesting to note the system, or lack of system which existed to guard the town by day and by night. Each parish had to provide its own watchmen, who were required by law to be of a certain number and to be paid a stipulated sum*. The act of George II. c. 22. provided sufficient machinery for a workable police system for the city of London. The mayor and council of the city had the power to levy and collect taxes and pay out the same for the support of the organization. Each alderman had charge of his own ward, making rules and regulations for the constables who superintended the watchmen and beadles. But even in London the system was notoriously ineffective, partly because

* 10 George III. c. 90.

the system itself lacked correlation, and partly because of the character of the men employed. In the first place the men were inefficient because of mental and moral deficiencies, for they were taken from the lower ranks of society and were very poorly paid. Each man carried a lantern and a rattle which was in itself enough to destroy the effect of the watch. Besides, the watchmen could not arrest trespassers unless caught in the overt act, which never happened because convenient warning was furnished by lantern and rattle. The result was that people had to defend themselves with bolt and bar as they were able, for the whole system of state protection was a farce, which the thieves well knew and made the most of*. In fact a better police system for thieves could not have been devised for it protected the thieves better than it did the people. Thus the police system instead of adding to the severity of the law, rather detracted from it.

The sheriffs of the counties were men of large personal interests in the county, but the office was a reward of honor from the the crown and not a business office of any considerable consequence. They were appointed

* Wakefield's Facts on the Punishment of Death.

for a year and rarely succeeded themselves in office. Constables and beadles did the real work. In the counties as in the towns there was a serious lack of general oversight of subordinates and the definite placing of responsibility on the part of the administrative offices; and in this, as in the other executive branches of the law, slothfulness was a leading phenomenon. This official carelessness increased as it descended to the lower officers, who did not hesitate to bargain with professional law breakers. The sense of professional duty seldom prompted an arrest for crime, but rather the police system of the nation was so degenerate that nothing was done without a fee.* They allowed beginners in crime to continue their calling until they committed a crime of sufficient importance to claim a reward for their apprehension and conviction.** The reward granted by Parliament to a police officer for the conviction of a criminal had an effect that was not anticipated. Although he received but a small part of the reward, for as it filtered through the offices above a little was subtracted by each, yet it was supposed to quicken

* Gentleman's Magazine. 1807. Vol. II. p.723.

** Wakefield's Facts on the Punishment of Death. p. 14.

his zeal for bringing criminals to justice; but in actual practice it defeated the end of justice by discrediting the testimony of the police officer* and by encouraging the committing of crime for a reward. The whole system was so thoroughly defective that the lower classes got very little encouragement from it for living above the law.

The jails and hulks of England during this period, and the preceding periods, were conducted in such a manner that they did not reform but rather educated the people in the criminal profession. As the common phrase put it, if he was not a criminal when he went into prison he was when he came out. Lord Suffield in 1819 believed that the condition of the jail in Norfolk, " by the greatest possible degree of misery, produced the greatest possible degree of wickedness." In the first place the state had no system of inspection of the jail conditions of the country; and the only inspectors were philanthropic persons instigated by the feeling of humanity of whom Howard was the greatest. James Neild prosecuted a course of inspection from 1803 to 1814, and the letters that he wrote were

* Committee on Nightly Watch and Police. 1812. p. 7.

published in the Gentleman's Magazine between the above dates. These were worthy attempts to get a hearing but the powers above listened, applauded, and spent the state money on more plausible schemes.

Then the jails were not so constructed as to give the proper condition necessary for reform. There were three hundred and thirty-eight prisons of all descriptions in England and Wales, of which seventeen had observed the legal requirements having at least eleven apartments to separate the prisoners into classes; ninety had two divisions to separate the male from the female prisons; fifty-eight had three divisions; fifty-one had four divisions; and nineteen had five divisions.* In 1819 the jails were so crowded that one hundred and ninety-four of them could not hold any more people, and fifty-eight jails, capacity seven thousand two hundred and sixty-three persons, had at one time ten thousand six hundred and twenty-eight prisoners. In 1818 a member of Parliament brought to the attention of the House the fact that the prison that had cost most to erect, was the most unfit for its purpose of any in the city.**

* Western in Parliamentary Debates. Vol. XXXVII. p. 1072.

** Parliamentary Debates. Vol. XL. p 261.

The jails were not only over-crowded but also lacked the essential comforts of life. Even the best in the kingdom gave more attention to the safe keeping of the prisoners than to the health and discipline of them. In 1819 only ninety-four jails provided some work for the inmates, while the other two hundred and seventy-four had no work for the prisoners except a very little cleaning up in the prison; * therefore much time was given for idle talk and misbehavior in which the prisoners indulged to such an extent that the keepers often had to defend themselves from their attacks. ** An idea of their personal condition may be gained from the orders given to the jailors of the country concerning the toilet of the prisoners before bringing them into court. They must not bring more than a half dozen at one time, their hair must be combed or the head shaved; the jailers must see to it that they have soap and water to wash their hands and face, and that they bathe their feet in salt water. *** The old jail called Borough Crompton in the metropolis in 1818 contained scarcely a whole pane of glass in the whole building. #

* Parliamentary Debates. Vol. XL. p. 1272.

** Report on the Prisons of Gt. Br. p. 62-4; 836.

*** Gentleman's Magazine. 1800. Vol. I. p. 200.

Parliamentary Debates. Vol. XXXVII. p. 261.

Mrs. Fry began her visitations to the female prisoners of the London prisons about 1813. She found them in a terrible condition. At Newgate about three hundred women occupied, with their children, four rooms of about one hundred and ninety square yards of floor space. There were both the tried and the untried, those for misdemeanors and those for felony, without any classification at all; and all were under the supervision of a keeper and his son. The state provided neither clothing nor bedding. As a result they were exposed to the inclemency of the weather.* Every new prisoner had to pay garnish with which they bought beer at the tap kept by the turnkey. Prison discipline was very lax, in fact it was limited to the safe keeping of the prisoners, and to the preventing them from injuring each other.

Communication with the outside world depended upon the disposition of the jailer. In some of the London prisons the matter was not regulated at all except for the safe keeping of the offenders. In Newgate in the early years of the nineteenth century the criminal could have his friends to gamble and to take lunch with him,

* Corder's Life of Elizabeth Fry. p. 198.

and could have his girl at night. The women came under the guise of being relatives of the convict. One of the prisoners was so popular with the abandoned women that seven different ones visited him in one day.*

All this the keeper knew, and the other inmates had to witness. What is more appalling is the fact that the schoolmasters, who kept the prison school for the younger boys confined in the prison, were convicts sentenced for various crimes which took them out of the teaching business from time to time.

The crowded condition, and the poor architectural arrangements of the jails, forced the people to live a gregarious life. They could not be alone if they desired. It was simply a matter of time before the most refined would succumb to the consequences of their environments, because of the obscene talk and actions of their compatriots. A few items of the numbers, and the time spent, in this condition will show the actual situation that confronted the unfortunates of the lower classes.

In 181¹ about five thousand three hundred and thirty-seven people were committed to the different jails of

* Report on the Prison of Gt. Bt. 1836. p. 64.

England and Wales for trial, which number gradually increased to thirteen thousand five hundred and sixty-seven in 1818.* In other words, to make the fact more striking, an army of over seventy-five thousand men and women passed through this horrible jail system within nine years. The number would be vastly swelled by adding to it the number of children accompanying their parents, and relatives and friends who came to visit, and, possibly, to care for the inmates during their legal confinement. We have not yet reached the end for the jails enclosed every year hundreds of debtors who had fallen upon evil times.**

The time spent in the jail between apprehension and trial depended upon the number of assizes held in the counties which averaged about two annually. The judicial department of the English government was not definitely organized so as to give a speedy trial to those apprehended, for the judges thought more of their discretion than of speedy justice, and the officers would not move without their fees, while the lower orders languished in the prisons. Indeed, justice followed upon the heels

* Committee on Criminal Law. 1819. App. No. 1.

** Sidney's Early Days of the Nineteenth Century Vol. II.
p. 185.

of apprehension so slowly that the result was disastrous.*
 In the county of Kent the assizes began in March 1819.
 Twenty-nine people had been in jail since October the
 first, 1818, that is, at least six months before trial;
 and eighty-three had been placed in before January the
 first, 1819, and enough people later to make a total
 of one hundred and seventy-seven for the Lent assize.
 Of this number seventeen were acquitted, nine had no
 bill against them, and twenty-five were sentenced for
 felony to six months imprisonment for they had already
 been in several months.** At Maidstone in Kent three
 persons had been in jail seven months before trial,
 although they were discharged for lack of prosecution,
 while some felons confined in the same prison were given
 a few months sentence. The honorable Lord Suffield
 was convinced of the evils of the prison system by discovering
 that a sixteen year old lad was kept in jail
 at Norwich for twelve months for an offence for which
 he was afterwards sentenced to three months imprisonment.
 *** The long imprisonment before trial not only broke

* Report on the Police of the Metropolis. 1828. p. 8.

** Parliamentary Debates. Vol. XL. p. 1070.

*** Sidney's Early Days of the Nineteenth Century. Vol. II.
 p. 194.

the principle that a man should not be punished before trial, but it virtually pronounced the sentence of guilty against all who happened to fall into the penal machinery, and who had to await trial to prove his right to freedom. One thing is evident, there was a gross social negligence, for the upper class did not know and did not care, the middle class was too busy, and the lower class was powerless. Those who were acquitted, or dismissed from trial, went out from these seminaries of vice to spread what they had gathered; while the convicted sank into the system to be thoroughly saturated with the contagion of lawlessness and immorality.

Although we have not mentioned the hulks, yet they were not the least important in their influence for lawless living. They contained a majority of the prisoners sentenced to transportation for seven years, but the wheels of the executive government moved too slowly to get them sent out much before their time was half up.* The universal opinion of those who understood their condition was that they educated their full share in crime, and then turned them loose on society to practice their art. The leading virtues that they possessed

* Romilly's Memoirs. Vol.II. p. 247.

were cheapness and mobility, for an old worn out vessel could be bought and fixed up for a few hundred pounds, and could be moved about to the places where convict labor was wanted.

The state owned and loosely operated a system of penal institutions that did not discipline the unruly, strengthen the weak, nor guide the strong; but it offered a meeting place for criminal education. The practice of the law encouraged the commission of crime by providing numerous loop-holes through which the accused could escape, and the vicious jail conditions instructed the lower classes more definitely concerning criminal life. It was a compliment to the race that so many of the lower orders did not adopt the "short but merry course of life" when not only state but private influences guided them towards it. But this is the severity of the penal law, that it taught the poor a trick and then punished them for practicing it.

Aside from the penal system of the state, there was a multitude of circumstances that led to criminal habits, which the state permitted to exist practically unrestrained. The use of spirituous^{liquor} was a national habit, with which the lower orders were thoroughly imbued, for they felt the necessity and the pleasure of it; but they unfortunately reaped what they sowed for poverty is an exacting master. After the reduction of the tax on liquor in 1816 an immediate increase in crime was noticed for it could be secured very cheaply and easily.

The receivers of stolen goods did not hesitate to continue their business, in spite of the severe laws passed against them, —laws which, it seems, only increased their prosperity. These insidious traders were so fond of their criminal, yet profitable business, that they went into the prisons and showed the inmates hands full of gold to excite them to more cunning depredations when freed.* They sometimes kept a flash-house or a brothel in conjunction with their business. A flash-house was the name given to a hotel for evil-doers. In some of them only boys were admitted in order to shield the lodgers from men who were stronger

* Wakefield's Facts on the Punishment of Death. p. 45

and who would take their money and effects, and therefore deprive the proprietor of customers and money.

In these houses every rule in the catalogue of decency was broken by both sects. Although the keeper never exposed his person in stealing, yet he was full of schemes for the benefit of his customers who happened to run out of plans and money. In modern language he ran an employment bureau for illegal business. The police knew of these places where professional thieves lived, but they refused to close them, for they felt that it was easier to apprehend a thief when his habitation was known.

In 1828 Wakefield found after extended investigation that nineteen out of twenty people were seduced into crime by professional law breakers. A thief would often spend ten pounds to corrupt a single youth. This he accomplished by allowing him to indulge in luxurious food and drink, and to cohabit with women.* The police directly assisted the thieves in this corruption by permitting the youth to commit a rewardable offense before apprehension.*†

* Wakefield's Facts on the Punishment of Death. pp. 18-22.

before apprehension.* A few items given the committee on the criminal law in 1819 will demonstrate the conditions under which the poor labored in the attempt to live honestly. Upwards of forty thousand abandoned women roamed the streets of London without interference. In three parishes which had a population of sixty-nine thousand people, and had nine thousand nine hundred and twenty-five houses, there were three hundred and sixty brothels and over two thousand prostitutes. In one house over four hundred beds were taken in one night. The children of the poor spent a great deal of time in idleness because there were no schools and but little employment for them, which fact made them especially susceptible to the temptations to lead a lawless life.

The amusement of the poor consisted in bear-baiting, dog-fighting, and other questionable amusements, which, together with the other means of indulging their passions, certainly placed them at a disadvantage in the battle of honest living. One source of diversion had a direct effect upon the tendency to criminality, and that was the public hangings. In 1807 in London two men and a woman were hanged for crimes that had aroused considerable

* Romilly in Parliamentary Debates. Vol. XXXI. p. 968.

attention. Over twenty thousand people were present and the pressure was so great that thirty were killed and ten wounded*. Professional thieves always attended hangings where they met apprentices and idlers of all descriptions. Pickpockets exercised their art within the shadows of the gallows, knowing full well that they would "kick Jack Ketch" themselves someday**. Apprentices made the life of the watchmen, and pedestrians generally, very miserable after night fall.***

The law that a person had to serve a seven year apprenticeship before entering a trade still obtained#. Those who could not secure a position were placed by the overseer of the poor.## Children were sent off in large numbers to distant factories where they were absolutely dependent upon the factory managers.### This was done under the law of apprenticeship, but the result was altogether contrary to the purpose of the original legislation,

* Gentleman's Magazine. 1807. Vol.I.

** Wakefield's Facts on the Punishment of Death. p.63.

*** Sidney's Early Days of the Nineteenth Century.Vol.I.p.152.

Romilly's Memoirs. Vol. II. p. 372.

Hasbach's History of English Agricultural Labor.pp.184sq.

Romilly's Memoirs. Vol. II. p. 372.

for the old personal relations of the master and his apprentices was absolutely annihilated by the factory system. The law degenerated into a means of enslaving the poor instead of training them in a trade for their own well-being. The apprentices were the most plastic raw material on which seducers worked, for the luxury of the life of a successful thief made a strong appeal to the poor laboring apprentice. The pressure of the industrial revolution drove youth in the direction of the criminal life because of its harshness. This tendency was enhanced by the condition in which the laborer around the factory had to live, but the desire for cheap labor led the employing class to smooth over the evils of the system, for the price of goods was measured against human life. The emphasis was on the labor, rather than on the future, of the apprentice. On the other hand the poor laws encouraged idleness by prohibiting the flow of the poor towards the place of labor. The social system out of which the laws grew had changed, and, instead of changing the law to meet the new conditions, the property classes interpreted them to suit their own convenience.

We have already observed that society encouraged crime by its hesitancy to apply the laws and to set in motion the penal machinery provided by an upper law-making class. These circumstances relaxed the extreme harshness of the law which directly thwarted the purpose of the whole penal system, therefore the property owners had to direct their attention to a means of protection that would remove the defects in the penal ~~systems~~ of the state. The people who suffered from thefts had to bring the case to the court and prosecute with witnesses and hired attorneys which were expensive. Besides, the individual hesitated about prosecuting, which mitigated the severity of the law, but encouraged the commission of crime. The people who were annoyed by these difficulties overcame them by organizing societies for prosecuting depredators who trespassed upon any member of the society. They retained one attorney constantly to look after the cases of which they were the prosecutors*. He took the place of a public prosecuting attorney, which did not exist, as far as this group in the community was concerned; and by this means the association bore all



* Committee on the Criminal Law. 1819. pp. 105. passim.

responsibility. Therefore the expenses of prosecution were reduced and the individual was relieved from any conscientious scruples against prosecution. They usually prosecuted vigorously and sent many to death or to imprisonment; but this zeal for prosecuting according to the letter of the law prejudiced juries against them and to them the defendants looked for protection in court.* These societies were composed mostly of members of the upper class, which, as a class, believed in a more rigorous application of the law.

The weakness of the law caused a movement for protection among the middle class that was analogous to the associations of the upper class. The watch and ward laws of the metropolis provided a system that had a sufficient organization to keep order in the streets, and prevent a large number of crimes, but it lacked life. As a result the property owners of the middle class organized in order to take turns at watching the streets and superintending the hired watchmen.** The committee on the police in 1812 found this patriotic action on the part of the inhabitants so satisfactory that they recommended

* Wakefield's Facts on the Punishment of Death. p. 67.

** 10. George II. c. 22.

legislation on the subject to give it wider extension. In the first place it was better than the legal way, and reduced the rates on the large-property class.* The law was extremely inadequate, therefore the people had to use extra legal means to protect themselves. It was the only means at their disposal to supplement a system that the state would not improve, for property was a privilege and the burden rested on the owner to protect it. The state simply provided the barest legal means to strengthen individual endeavor, therefore this attitude of the law rested heavily upon the middle class.

Some individuals circumvented the law and accomplished their purpose in a more satisfactory manner than by using the legal means, namely by compromise. The English middle class was not squimish about the penalty imposed on a culprit if it did not take his life.** That was the stumbling block in the majority of cases. It was not an easy task to send clerks, servants, and others in close personal contact with the plaintiff into a system that might result in death, and therefore compromise with the judicial system carried the day. In London a servant was suspected of purloining articles

~~and was taken into custody by an officer and the master~~

* Report on the Nightly Watch and Police. 1812.

** Committee on the Criminal Law 1819. passim.

and hiding them in a box. An officer and the master examined the box and found their surmises to be correct. The offender was taken before a sitting alderman, but the master refused to prosecute. In this case the judge unhesitatingly did an unusual thing for he permitted the case to be dropped and sent the boy into the navy. He reformed and years afterward wrote the gentleman thanking him for his leniency*.

There were two kinds of illegal trades which differed from others for which the upper classes were more directly responsible. The country gentlemen made the game laws to suit themselves and to benefit their own class, which forced the lower classes into crime because of poverty as well as profit. The poachers were usually laborers in the community where the game was stolen but they were well organized and carried on their expeditions in bands.** The sale of game made every shopkeeper who handled game an accomplice in the crime. " The man who would buy for the consumption of his house a brace

* Committee on Criminal Law. 1819. pp. 106-7.

** Gentleman's Magazine. 1807. Vol. II. p. 1173.

of cartridges can only get what has been procured by crime.*" Because of the legislators, the physicians and anatomists had to procure bodies for dissection by buying them from body-snatchers who in turn stole them from cemeteries. The body-snatchers were so well paid for their dispicable work that they murdered people in order to sell the bodies. Their customers defended them when they fell into the hands of the law.**

The state had the right to make the laws as severe as it saw fit, which no one questioned, for the people were strong on legal justice; but it could not remove the obliquy that followed successful prosecution. The Englishman loved his property therefore he hated the trespasser, but he could not kill him in spite of the soothing balm of legality. During this period which we have been considering there was a conflict between ethics and law in which both won a good share of victories. From the standpoint of the lower classes the notions of right and wrong, legality and illegality, were blunted by the law itself; and they were so beset about with villanies that they fell victims to circum-

* Edinberg Review. Vol. XLIX. p. 101.

** Wakefield's Facts on the Punishment of Death. App.

stances over which they had no control. Under such a regime the labor market and the criminal record were closely related, but here and there in society there broke out indications that law and practice were two separate things and controlled by two distinct feelings. These united after 1822 resulting finally in cleaning up the jails, reorganizing and vivifying the police system, and opening the labor market to honest endeavor. Failure was the epitaph of the penal system of England before the reform.

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